



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1347

Introduced 2/9/2007, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

815 ILCS 120/2
815 ILCS 137/10

from Ch. 17, par. 852

Amends the Illinois Fairness in Lending Act. Provides that "equity stripping" and "loan flipping" shall only include loans that qualify as high risk home loans. Amends the High Risk Home Loan Act. Provides that "points and fees" does not include: (i) fees paid to the Veterans Administration required by law; (ii) fees paid to the Federal Housing Administration required by law; (iii) fees paid for private mortgage insurance; or (iv) all fees paid to a mortgage broker by a lender if the loan is less than \$50,000, or 50% of fees paid to a mortgage broker by a lender if the loan is between \$50,000 and \$100,000.

LRB095 04890 LCT 24954 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Fairness in Lending Act is amended
5 by changing Section 2 as follows:

6 (815 ILCS 120/2) (from Ch. 17, par. 852)

7 Sec. 2. As used in this Act:

8 (a) "Financial Institution" means any bank, credit union,
9 insurance company, mortgage banking company, savings bank,
10 savings and loan association, or other residential mortgage
11 lender which operates or has a place of business in this State.

12 (b) "Person" means any natural person.

13 (c) "Varying the terms of a loan" includes, but is not
14 limited to the following practices:

15 (1) Requiring a greater than average down payment than
16 is usual for the particular type of a loan involved.

17 (2) Requiring a shorter period of amortization than is
18 usual for the particular type of loan involved.

19 (3) Charging a higher interest rate than is usual for
20 the particular type of loan involved.

21 (4) An underappraisal of real estate or other item of
22 property offered as security.

23 (d) "Equity stripping" means to assist a person in

1 obtaining a loan secured by the person's principal residence
2 for the primary purpose of receiving fees related to the
3 financing when (i) the loan decreased the person's equity in
4 the principal residence and (ii) at the time the loan is made,
5 the financial institution does not reasonably believe that the
6 person will be able to make the scheduled payments to repay the
7 loan. "Equity stripping" shall only include loans that qualify
8 as "high risk home loans" as defined in the High Risk Home Loan
9 Act. "Equity stripping" does not include reverse mortgages as
10 defined in Section 5a of the Illinois Banking Act, Section 1-6a
11 of the Illinois Savings and Loan Act of 1985, or subsection (3)
12 of Section 46 of the Illinois Credit Union Act.

13 (e) "Loan flipping" means to assist a person in refinancing
14 a loan secured by the person's principal residence for the
15 primary purpose of receiving fees related to the refinancing
16 when (i) the refinancing of the loan results in no tangible
17 benefit to the person and (ii) at the time the loan is made,
18 the financial institution does not reasonably believe that the
19 refinancing of the loan will result in a tangible benefit to
20 the person. "Loan flipping" shall only include loans that
21 qualify as "high risk home loans" as defined in the High Risk
22 Home Loan Act.

23 (f) "Principal residence" means a person's primary
24 residence that is a dwelling consisting of 4 or fewer family
25 units or that is in a dwelling consisting of condominium or
26 cooperative units.

1 (Source: P.A. 93-561, eff. 1-1-04.)

2 Section 10. The High Risk Home Loan Act is amended by
3 changing Section 10 as follows:

4 (815 ILCS 137/10)

5 Sec. 10. Definitions. As used in this Act:

6 "Approved credit counselor" means a credit counselor
7 approved by the Director of Financial Institutions.

8 "Borrower" means a natural person who seeks or obtains a
9 high risk home loan.

10 "Commissioner" means the Commissioner of the Office of
11 Banks and Real Estate.

12 "Department" means the Department of Financial
13 Institutions.

14 "Director" means the Director of Financial Institutions.

15 "Good faith" means honesty in fact in the conduct or
16 transaction concerned.

17 "High risk home loan" means a home equity loan in which (i)
18 at the time of origination, the annual percentage rate exceeds
19 by more than 6 percentage points in the case of a first lien
20 mortgage, or by more than 8 percentage points in the case of a
21 junior mortgage, the yield on U.S. Treasury securities having
22 comparable periods of maturity to the loan maturity as of the
23 fifteenth day of the month immediately preceding the month in
24 which the application for the loan is received by the lender or

1 (ii) the total points and fees payable by the consumer at or
2 before closing will exceed the greater of 5% of the total loan
3 amount or \$800. The \$800 figure shall be adjusted annually on
4 January 1 by the annual percentage change in the Consumer Price
5 Index for All Urban Consumers for all items published by the
6 United States Department of Labor. "High risk home loan" does
7 not include a loan that is made primarily for a business
8 purpose unrelated to the residential real property securing the
9 loan or to an open-end credit plan subject to 12 CFR 226 (2000,
10 no subsequent amendments or editions are included).

11 "Home equity loan" means any loan secured by the borrower's
12 primary residence where the proceeds are not used as purchase
13 money for the residence.

14 "Lender" means a natural or artificial person who
15 transfers, deals in, offers, or makes a high risk home loan.
16 "Lender" includes, but is not limited to, creditors and brokers
17 who transfer, deal in, offer, or make high risk home loans.
18 "Lender" does not include purchasers, assignees, or subsequent
19 holders of high risk home loans.

20 "Office" means the Office of Banks and Real Estate.

21 "Points and fees" means all items required to be disclosed
22 as points and fees under 12 CFR 226.32 (2000, no subsequent
23 amendments or editions included); the premium of any single
24 premium credit life, credit disability, credit unemployment,
25 or any other life or health insurance that is financed directly
26 or indirectly into the loan; and compensation paid directly or

1 indirectly to a mortgage broker, including a broker that
2 originates a loan in its own name in a table-funded
3 transaction, not otherwise included in 12 CFR 226.4. "Points
4 and fees" does not include: (i) fees paid to the Veterans
5 Administration required by law; (ii) fees paid to the Federal
6 Housing Administration required by law; (iii) fees paid for
7 private mortgage insurance; or (iv) all fees paid to a mortgage
8 broker by a lender if the loan is less than \$50,000, or 50% of
9 fees paid to a mortgage broker by a lender if the loan is
10 between \$50,000 and \$100,000.

11 "Reasonable" means fair, proper, just, or prudent under the
12 circumstances.

13 "Servicer" means any entity chartered under the Illinois
14 Banking Act, the Savings Bank Act, the Illinois Credit Union
15 Act, or the Illinois Savings and Loan Act of 1985 and any
16 person or entity licensed under the Residential Mortgage
17 License Act of 1987, the Consumer Installment Loan Act, or the
18 Sales Finance Agency Act who is responsible for the collection
19 or remittance for, or has the right or obligation to collect or
20 remit for, any lender, note owner, or note holder or for a
21 licensee's own account, of payments, interest, principal, and
22 trust items (such as hazard insurance and taxes on a
23 residential mortgage loan) in accordance with the terms of the
24 residential mortgage loan, including loan payment follow-up,
25 delinquency loan follow-up, loan analysis, and any
26 notifications to the borrower that are necessary to enable the

1 borrower to keep the loan current and in good standing.

2 "Total loan amount" has the same meaning as that term is
3 given in 12 CFR 226.32 and shall be calculated in accordance
4 with the Federal Reserve Board's Official Staff Commentary to
5 that regulation.

6 (Source: P.A. 93-561, eff. 1-1-04.)